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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,933	05/23/2001	Maurice Eduardus Theodorus van Esbroeck	V0028/258607	9991

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EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 10/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,933

Applicant(s)

Van Esbroeck et al

Examiner

George Young

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 days ~~(MONTHS)~~ FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-37 ☒ are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-37 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☒ All ☐ Some ☐ None of the:
 - ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, drawn to a method for molding three-dimensional products from a mass of foodstuff, classified in class 426, subclass 512.
- II. Claims 6-37, drawn to a molding device for molding three-dimensional products from a mass of foodstuff, classified in class 425, subclass 363.

The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method of Group I as claimed can be practiced by another and materially different apparatus, e.g., an apparatus which does not include the same or corresponding special technical features as set forth in the Group II apparatus such as a drum having a direction of rotation, a drum wall having at least one mold cavity extending through the drum wall, separating means for removing any mass projecting from the at least one mold cavity of the drum, a drum having a first surface, a second surface and at least one passage extending through the drum wall, the mold cavity is at least partially lined with a substantially flexible membrane, feed means for feeding a pressure medium between the mold and the membrane at a feed position, pressure medium feed means having outlet nozzles arranged in the base of the mold cavity for supplying pressure to the base to move the piston, a second mass-feed component positioned along the path downstream of the first

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mass-feed component for feeding a second mass into the at least one mold cavity, a rotating ring positioned around the tube, etc.

Because these invention are distinct for the reasons given above and have acquired a separate status in the are requiring separate searches as shown by their different classification, restriction for examination purposes as indicated is proper.

If applicants elect the apparatus of Group II (claims 6-37), the following species restriction is further applied:

This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 1, 2, 4, 12b, 15a, 16a and 16b, respectively.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicants are advised that the response to this requirement to be complete must include an election of the invention (and species if applicable) to be examined even though the requirement be traversed

Any inquiry concerning this communication should be directed to Examiner George C. Yeung at telephone number (703) 308-3848 and the fax phone number for the organization where this application is assigned is (703) 872-9310.

G. C. Yeung/mn

October 26, 2002



GEORGE C. YEUNG
PRIMARY EXAMINER